

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE:	Rafael Rivera,)	CHAPTER 13
)	
	Debtor)	
)	CASE 11-24956
<hr/>			
	RAFAEL RIVERA)	
)	
	Debtor / Plaintiff)	ADVERSARY CASE:
)	
	V)	No: _____
)	
	SELECT PORTFOLIO SERVICING,)	
	INC.)	
)	
	Defendant)	
<hr/>			

**COMPLAINT
FOR VIOLATION OF DISCHARGE INJUNCTION**

1. This complaint is filed by the Debtor in the above captioned chapter 13 case. This Court has jurisdiction over this proceeding which arises in a case under the Bankruptcy Code and concerns property of the Debtors, pursuant to 28 U.S.C. § 1334. This is a core proceeding.

2. Debtor filed its Chapter 13 Petition on December 5, 2011.

3. In the Chapter 13 case, Debtor filed its Amended Motion to Determine Secured Status of Claim on February 8, 2012 (the “Motion to Strip Lien”) related to a second mortgage held by BAC Home Loan Servicing, LP (“BAC”). The second mortgage (the “Lien”) encumbered Debtor’s home at 3875 Overlake Drive Cumming, GA 30041 (the “House”).

4. On March 19, 2012, the Court entered its Order granting the Motion to Strip Lien (the “Order”) (Doc.No.27) (attached as *Exhibit A*). The Order expressly held that the Lien held by BAC shall be treated entirely as a general non-priority unsecured claim. The Order further held that upon discharge of Debtor, the Security Deed recorded at Book 5229, Page 310 in the official records of Forsyth County shall be extinguished automatically.

5. Out of an abundance of caution, Debtor also filed a Notice of Cancellation of Lien in the public records of Forsyth County on September 27, 2017 at Book 8340, Page 553. (See *Exhibit B*)

6. Debtor completed his Chapter 13 Plan and received a Discharge of all debts on May 11, 2017. (Doc. No. 88).

7. Notwithstanding the extinguished Lien and the discharge of all general unsecured debts, including the debt that was secured by the Lien (the “Debt”), Select Portfolio Servicing Inc. (“SPS”), as successor to BAC, is attempting to collect the Debt from the Debtor.

8. SPS has been informed of this violation by undersigned counsel and has refused to correct its statements and cease collection activities against Debtor.

9. Defendant has refused to release the lien on Debtors' homestead, claiming instead that the Debtor voluntarily modified his existing first mortgage by adding the discharged amount of the discharged Second Mortgage.

10. Defendant has violated 11 U.S.C. § 524 by attempting to collect the discharged debt and by continuing to list the discharged debt in the accounting showing all sums due from Debtor to SPS.

11. A sample collection notice which includes the sums discharged in the Second Mortgage is attached hereto as ***Exhibit C***.

12. WHEREFORE, Plaintiff prays the Court:

- a. Order Defendant to release the lien on Plaintiff's property as to the value of the Second Mortgage;
- b. Find that Defendant is in contempt of Court for violating 11 U.S.C. §§ 362 and 524;
- c. Award Plaintiffs damages, costs and attorney's fees pursuant to 11 U.S.C. § 362 and for punitive and exemplary damages.

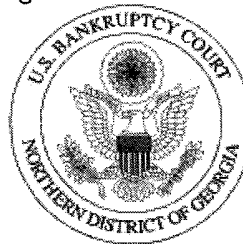
d. Order such other relief as is just and proper.

This 6th day of March, 2025

Respectfully,

_____/s/_____
Howard P. Slomka
Georgia Bar #652875
Attorney for the Debtor
Howard Slomka, PC
6400 Powers Ferry Road, Suite 200
Atlanta, GA 30339
Howie@Slomka.us
770-856-5793

EXHIBIT A



IT IS ORDERED as set forth below:

Date: March 19, 2012

Robert E. Brizendine
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:

Rafael Rivera

Debtor.

CHAPTER 13

CASE NO. 11-24956-reb

Rafael Rivera

Movant,

vs.

BAC Home Loans Servicing, LP

Respondent.

CONTESTED MATTER

**ORDER GRANTING DEBTORS MOTION TO DETERMINE SECURED STATUS OF
CLAIM**

The above matter came before the Court on March 7, 2012 on Debtor's Motion to Determine Secured Status of Claim (the "Motion") [Docket No. 22]. Debtor seeks a determination that the second priority lien held by BAC Home Loans Servicing, LP (the "Lien") on Debtor's residence located at 3875 Overlake Drive, Cumming, GA 30041 (the "Property") is completely unsecured because, based upon the Property's value and the amount of the first priority mortgage, there is no

equity in the Property to which the Lien can attach. No party filed a response or otherwise appeared in opposition to Debtor's Motion; therefore, it is hereby

ORDERED that Debtor's Motion is granted as provided herein; it is

FURTHER ORDERED that, for purposes of the Debtor's chapter 13 case, the claim of BAC Home Loans Servicing, LP related to the Lien shall be treated as a general non-priority unsecured claim; and it is

FURTHER ORDERED that, effective upon entry of discharge in the Debtor's Chapter 13 case, the Lien of BAC Home Loans Servicing, LP evidenced by a security deed recorded in the Superior Court of Forsyth County at Deed Book [5229], Page [310], shall be deemed void, and shall be extinguished automatically without further order pursuant to 11 U.S.C. section 506(d); provided, however, that the Court reserves jurisdiction to consider if appropriate the avoidance of Respondent's Lien prior to entry of a discharge under 11 U.S.C. section 1328(a). In the event the Debtor's case is dismissed or converted to chapter 7, the Lien of Respondent shall not be affected by this Order in accordance with 11 U.S.C. sections 349(b)(1)(C) or 348(f)(1)(B) as applicable.

END OF DOCUMENT

PREPARED BY:

/s/ Howard Slomka
Howard Slomka, Esq.
GA Bar #652875
Attorney for Debtor
Slomka Law Firm
1069 Spring Street, NW
Suite 200
Atlanta, GA 30309
Phone: 678.732.0001

NO OPPOSITION:

/s/
Eric Roach, Staff Attorney for
Trustee Nancy J Whaley
GA Bar No. 143194
Suite 120
303 Peachtree Center Avenue
Atlanta, GA 30303

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Atlanta, GA 30309

Nancy J Whaley
Chapter 13 Trustee
Suite 120
303 Peachtree Center Avenue
Atlanta, GA 30303

Brian T. Moynihan, CEO or his successor
Bank of America Corporation
401 N Tryon Street
NC1-021-02-20
Charlotte, NC 28255-0001

Lisa F. Caplan, Esq..
Rubin Lublin Suarez Serrano, LLC
3740 Davinci Court
Suite 400
Norcross, GA 30092

BAC Home Loans Servicing, LP
Bankruptcy Department
Mail Stop: CA6-919-01-23
400 National Way
Simi Valley, CA

BAC Home Loan Servicing, LP
400 Countrywide Way
Simi Valley, CA 93065

Rafael Rivera
3875 Overlake Drive
Cumming, GA 30041

EXHIBIT B

Type: STATE LAND RECORDS
Recorded: 9/27/2017 4:28:00 PM
Fee Amt: \$20.00 Page 1 of 5
Forsyth County, GA
Greg G. Allen Clerk Superior Ct

Participant ID:

BK 8340 PG 553 - 557

Cross References:

Book 5229, Page 310 (Assignment)
Book 4265, Page 158 (Second Mortgage)

Prepared by and return to:
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Slipakoff & Slomka, PC
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Suite 1700 Atlanta, GA 30339
(404)800-4001
HS@myatlslaw.com

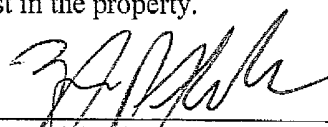
NOTICE OF CANCELLATION OF LIEN

The undersigned counsel represented Rafael Rivera ("Owner") in his Chapter 13 Bankruptcy (Case 11-24956) filed on December 5, 2011 in the U.S. Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy").

As part of the Bankruptcy, Owner filed a Motion to Determine Secured Status of Claim (the "Motion") of the second mortgage held by BAC Home Loans Servicing, LP ("Lender") as amended or assigned (the "Second Mortgage"). Such a motion is commonly referred to as a motion to strip a lien. The Bankruptcy Court granted the Motion on March 19, 2012 when it issued the Order attached hereto as *Exhibit A* (the "Order"). Owner received his discharge in the Bankruptcy on May 11, 2017.

Pursuant to the Order, Owner's property at 3875 Overlake Drive, Cumming GA 30041 is no longer encumbered by the lien of the Second Mortgage. This Notice is filed to put this matter in the public record and so that all future buyers, lenders, or interested parties can rely on the cancellation of the Lender's security interest in the property.

Submitted this 26th day of September, 2017


Howard P. Slomka, Esq.

State of Georgia
County of Cobb

Sworn to and subscribed before me on the date shown above.

Notary: 

Seal:

Witness: 

Robin Brazil

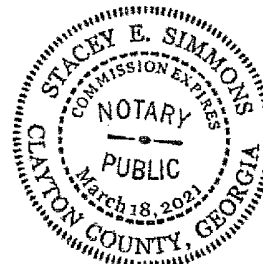
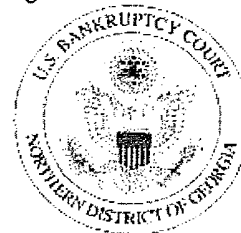


EXHIBIT A

[Order Stripping Lien]



IT IS ORDERED as set forth below:

Date: March 19, 2012

**Robert E. Brizendine
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE:

Rafael Rivera

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END OF DOCUMENT

PREPARED BY:

/s/ Howard Slomka
Howard Slomka, Esq.
GA Bar #652875
Attorney for Debtor
Slomka Law Firm
1069 Spring Street, NW
Suite 200
Atlanta, GA 30309
Phone: 678.732.0001

NO OPPOSITION:

/s/
Eric Roach, Staff Attorney for
Trustee Nancy J Whaley
GA Bar No. 143194
Suite 120
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Bankruptcy Department
Mail Stop: CA6-919-01-23
400 National Way
Simi Valley, CA

BAC Home Loan Servicing, LP
400 Countrywide Way
Simi Valley, CA 93065

Rafael Rivera
3875 Overlake Drive
Cumming, GA 30041

EXHIBIT C



Customer Service: (800) 258-8602
Monday - Friday 8:00AM - 9:00PM ET
Saturday 8:00AM - 2:00PM ET

For other important information, see reverse side



+ 2159710 000048126 1300 P2
Rafael Rivera
3875 Overlake Dr
Cumming, GA 30041-2843

48126



Bankruptcy Message

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.

We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

Account Number 0015707946
Property Address 3875 OVERLAKE DR
CUMMING GA 30041
Account Due Date 01/01/2025
Payment Due Date 01/01/2025

Payment Amount \$2,119.66

Explanation of Payment Amount

Principal	\$528.24
Interest	\$1,048.38
Escrow (Taxes and Insurance)	\$543.04
Regular Monthly Payment	\$2,119.66
Unpaid Late Charges	\$0.00
Other Charges and Fees	\$0.00
Charges / Fees this Period	\$0.00
Past Unpaid Amount(s)	\$0.00
Unapplied Payment(s)	\$0.00
Total Payment Amount	\$2,119.66

Account Information

Interest Bearing Principal	\$372,756.30
Deferred Principal	\$119,882.69
Outstanding Principal ¹	\$492,638.99
Interest Rate (Fixed)	3.375%
Prepayment Penalty	No

Transaction Activity (11/15/2024 to 12/13/2024)

Date	Description	Principal	Interest	Taxes & Insurance	Late Charges	Other Fees	Total ¹
		Balance					
11/15	BEG BALANCE	\$493,245.87	\$1,050.08	\$508.25	\$0.00	\$0.00	\$494,804.20
11/30	PAYMENT	(526.54)	(1,050.08)	(543.04)	0.00	0.00	(2,119.66)
11/30	PRINCIPAL PAYMENT	(80.34)	0.00	0.00	0.00	0.00	(80.34)
12/13	ENDING BALANCE	\$492,638.99	\$0.00	(\$34.79)	\$0.00	\$0.00	\$492,604.20

Past Payments Breakdown

	Paid Last Month	Paid Year To Date
Principal	\$606.88	\$6,999.24
Interest	\$1,050.08	\$12,711.33
Escrow (Taxes and Insurance)	\$543.04	\$6,989.43
Fees and Other Charges	\$0.00	\$0.00
Partial Payment (Unapplied)	\$0.00	
Total	\$2,200.00	\$26,700.00
Total Unapplied Balance	\$0.00	

Important Messages

All communication sent to you by SPS is always available on our website: www.spservicing.com. For faster access to written communication and documents, please log in to your customer account on our website to view.

¹ This amount is not a payoff quote. If you would like a payoff quote, please see instructions on reverse side.

Any transactions that occurred after the statement date noted above will be reflected on your next statement.

-  My Account ▾
  Assistance Programs ▾
  Statements & Letters
  Documents
  SPS ▾

Account Information Summary



Account Information	
Account Number	0015707946
Borrower Name	RAFAEL RIVERA
Co-borrower Name	
Origination Date	5/3/2006
Original Loan Amount	\$424,000.00
Loan Type	Conventional Without PMI
Interest Rate	3.375%
Maturity Date	6/2036

Last Payment Received		Scheduled Payment
	Date	1/31/2025
	Amount	\$2,200.00

Current Balances	Year-To-Date Balances
Principal	\$491,420.12
Escrow	\$1,120.87
Late Charges	\$0.00
Total Due	\$0.00

*If the account has an adjustable or step interest rate feature, the interest rate shown above may not be the current interest rate in effect on the account, but rather, it is the interest rate in effect as of the date through which the account is paid. Please contact us regarding any questions you may have regarding the interest rate or other aspects of the account.

Need further information, please Contact Us

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